Keeler Brass Automotive Group, a division of Keeler Brass Co., K B Lighting, a joint venture of Keeler Brass Co. *and* Robert Puckett and Lynn Wells. Case 7–CA–32185

July 14, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS, BROWNING, COHEN, AND TRUESDALE

On October 1, 1992, Administrative Law Judge Elbert D. Gadsden issued the attached decision. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in opposition to the General Counsel's exceptions and in support of the judge's decision.

The Board has considered the record and the attached decision in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The issues presented are whether the Keeler Brass Grievance Committee is a labor organization and, if so, whether the Respondent dominated or interfered with the formation or administration of the labor organization and contributed financial and other support to it, in violation of Section 8(a)(2) and (1) of the Act. The judge found that the Grievance Committee is not a labor organization within the meaning of Section 2(5) of the Act because the Respondent did not ''deal with'' the Committee, and he accordingly dismissed the complaint.

The General Counsel excepts, arguing that the Committee is a statutory labor organization, that the Respondent dominated it, and that the Committee should be disestablished. We find merit in the General Counsel's position.

I. FACTUAL BACKGROUND

The Respondent manufactures automotive parts and related products at its Kentwood and Stevens plants in Kentwood and Grand Rapids, Michigan. The Grievance Committee was established in 1983. The purpose of the Committee and the procedure governing the Committee's operation were outlined by the Respondent's human resources department (HRD) in a November 15, 1983 document entitled ''Grievance and Complaint Procedure.''

About 8 years later, by HRD memorandum dated March 26, 1991,[2] the Respondent's vice president, Leck, informed employees that

> we have been studying different approaches to the establishment of a new grievance procedure. After much thought and input, we have decided to hold a new election. The excellent performance of the committee during the past several months was a great factor in our decision to continue the practice of selection by election.

The memo advised employees that positions on the Committee would be for 2-year terms, that interested employees should sign up, and that more information would be forthcoming.

About March 26, the Respondent posted a signup list and eligibility rules. About May 3, the Respondent posted a letter to employees announcing the approved plant candidates for a May 13 election and the election procedures. On May 13, the Respondent posted an outline of its election procedures. On May 15, Vice President Leck announced the names of those elected to the Grievance Committee.

Leck testified that he had amended the original Grievance and Complaint Procedure in 1991.[3] The Respondent reduced Grievance Committee membership from nine representatives to five, changed the regular meeting days, eliminated all references to a separate ''Complaint Committee,'' and abolished the Committee's discretion to call special meetings without Leck's prior approval. Leck acknowledged that under the amended policy, the Committee meets in the Respondent's conference room, and the Respondent pays employee-members for time spent on Committee business and provides secretarial or clerical assistance when requested.

The Grievance Committee prepares minutes of its meetings and forwards these minutes to the human resources department where a summary is typed for posting on the employee bulletin boards. The first meeting of the newly elected Committee was held on June 12.[4]

Minutes from the June 26 meeting establish that Leck attended this meeting to clarify a misunderstanding concerning the number of committee members, including alternates. Leck presented the Committee with a letter which provided that the number of Committee members would be five, three from the Kentwood plant and two from the Stevens plant, with no alternate. The Committee then agreed.

[1] On September 1, 1994, Charles J. Morris moved to file an amicus brief. The Board denied the motion by Order dated September 8, 1994 (Member Cohen and former Member Devaney dissenting). Thereafter Morris filed a notice of representation of the Charging Parties. On January 23, 1994, the Charging Parties filed a motion for leave to file a supplemental brief. The Board denied the motion by Order dated January 26, 1995. On January 27, 1995, the Charging Parties filed a motion for reconsideration. The Board denied the motion by Order dated January 31, 1995.

[2] All subsequent dates are in 1991 unless otherwise indicated. The charge was filed on August 8, 1991; thus the 10(b) period began on February 8, 1991.

[3] The modified 1991 Grievance and Complaint procedure established by the Respondent is set forth in Appendix A.

[4] The judge's finding that the first meeting was held on June 26 is incorrect. This error is immaterial to our disposition of this case.

An HRD summary dated July 29 reflects that the Committee discussed and clarified policies contained in the Respondent's policy and procedure manual. Vice President Leck and Personnel Manager Patricia Caudill[5] assisted in this discussion and clarification.

The July 10 Committee minutes address employee Kevin Clinton's discharge grievance and a related misunderstanding about Committee access to employee personnel files. Chairperson Gerard Kruyswijk testified that the Committee instructed its secretary to inform HRD that a grievant should authorize Committee access to personnel documents. The Committee secretary agreed to discuss this issue with HRD.[6]

Committee minutes from August 7 reflect further discussion of Clinton's grievance. The Committee members came to a ''mutual understanding'' that Clinton had a ''negative record'' and ''has not been an honorable asset to the Company.'' Personnel Manager Caudill (the HRD representative to the Committee and an admitted supervisor) suggested that the Committee give Clinton the opportunity to plead his case. Clinton did so, apparently on August 14. Committee minutes of August 28 reflect that ''all the members were in favour of re-hiring Kevin as a new employee . . . except (one committee member).''

Chairperson Kruyswijk testified that the Committee decided that the Respondent's discharge of Clinton was too severe. The Committee then met with Leck and made the following recommendations to him:

> 1. Request to hire Kevin (Clinton) back as a new employee.
> 2. Kevin will receive a new seniority date.
> 3. Kevin will be on probation for one year.
> 4. Within this year Kevin may not receive any write-ups.
> 5. Kevin will not receive any back pay.
> 6. Keeler Brass can place Kevin where . . . needed.

Leck informed the Committee that he would consider their proposals, that he would contact the supervisors involved, and that he would then report back to them. Committee minutes and Kruyswijk's testimony establish that the Committee also asked Leck to clarify the Respondent's ''no call, no show'' policy.[7]

Leck responded to the Committee by memorandum dated September 3. Leck reminded the Committee that ''we had considerable discussion regarding the policy of No Call, No Show'' and he explained how the policy had been applied in the past to uphold terminations. Leck also complimented the Committee for establishing a productive and fair operation, and he again reminded the Committee to apply past practice. Leck concluded that ''regrettably, we feel the discharge should stand.''

The Committee reversed its decision. The September 11 minutes state:

> After talking to Patti [Caudill] about some similar cases we came to the mutual decision to agree with the advice of Mr. P. Leck, as stated in his letter of Sep. 3, 1991 (see file) that ''the discharge should stand'' . . . .
>
> Furthermore, we were informed that the ''now show/no call'' terminology was changed in some way to make the rule more understandable. HRD will post the change on the bulletin boards.

Kruyswijk testified that the Committee's initial decision concerning Clinton's grievance was tentative, not final, and that the Committee made proposals to Leck to work out the overall problem. Kruyswijk also testified that the Clinton grievance was an exception and the Committee generally does not deal with the Company over grievances.[8] Kruyswijk acknowledged that the HRD representative, Personnel Manager Caudill, informed the Committee that the no-call, no-show policy had been changed in response to the Committee's request that the Respondent reconsider this policy.[9]

The October 23 minutes reflect discussion of employee Diane Podpolucki's termination grievance. The Committee decided that Podpolucki should be reinstated with backpay for three specified reasons. The November 6 minutes, as amplified by Kruyswijk's testimony, establish that the Committee heard additional evidence after the Committee advised HRD of its ''tentative decision.'' The Committee had decided to take more evidence after Chairperson Kruyswijk initiated a discussion with Bob DeWispeleare, a supervisor in Podpolucki's department. During this discussion, DeWispeleare asked to present additional evidence. Thereafter, the Committee asked permission from HRD Representative Caudill to conduct a special meeting on

[5] Caudill had previously been an HRD representative for the Kentwood facility.

[6] The secretary acts as liaison with HRD by communicating Committee decisions to HRD in the event that HRD wishes to respond to recommendations of the Committee. See pars. IV, 3, d of the Grievance and Complaint Procedure set forth in Appendix A.

[7] The summary prepared by HRD concerning the August 28 Committee meeting states: ''Suggestions were made to Mr. Leck on possible solutions to the problem [the Clinton grievance-no call, no show policy]. Mr. Leck stated he would consider the various proposals and return to the Committee with a decision.''

[8] On cross-examination by the Respondent, Kruyswijk testified that the Clinton case was only the Committee's second grievance. He further testified that because the Committee was unfamiliar with limitations on its authority, it proposed items 1 through 6 above because it needed these ''questions'' answered prior to making a ''final deliberation.''

[9] Contrary to the Respondent's contention on brief, Kruyswijk's testimony establishes that after the Respondent's consideration of the no-call, no-show policy, the policy was changed, not merely clarified.

November 6. The November 13 minutes indicate that after DeWispeleare's evidence was considered, the Podpolucki grievance was denied, and the prior Committee decision to reinstate Podpolucki was reversed.

Kruyswijk testified that when the Committee deliberates, as opposed to taking testimony or hearing witnesses, no grievants or management representatives are present, unless the Committee requests that an HRD representative present additional evidence or advice as to policy and past practice.[10] Kruyswijk also testified that no one from management participates in making the grievance decisions.

The Clinton and Podpolucki grievance decisions were the only ones occurring within the 10(b) limitations period, so far as the record shows. Background evidence concerning other grievances predate the 10(b) period.[11]

II. THE JUDGE'S DECISION

The judge found that the Respondent dealt with the Committee only by processing and disposing of grievances and making minor changes in the grievance procedure. He reasoned that the Respondent's contacts with the Committee concerning Clinton's grievance fell within the Committee's written purpose, and that by considering the Committee's recommendations the Respondent was not dealing with the Committee in a ''negotiating'' sense.

Similarly, the judge found that the Respondent's approvals or disapprovals of Committee recommendations pertained to changes in the grievance procedure and were otherwise not related to wages, hours, and other terms and conditions of employment. The judge found that Leck was not obligated to consider the Committee's request that he change the Respondent's no-call, no-show policy, and the fact that Leck did so did not constitute ''negotiations concerning wages, hours, and other terms or conditions of employment.'' The judge concluded that the Respondent had not dealt with the Committee as a labor organization.

Additionally, the judge found a mutual intent to create a grievance committee for the sole purpose of fairly resolving employee grievances regarding application of Company policies and procedures.[12] As such, the judge found that the Committee is not a statutory labor organization. He dismissed the complaint, relying on *NLRB v. Cabot Carbon Co*., 360 U.S. 203 (1959), and *John Ascuaga's Nugget*, 230 NLRB 275 (1977). For the reasons explained below, we reverse.

III. ANALYSIS

After the judge issued his decision, the Board issued its decisions in *Electromation, Inc*., 309 NLRB 990 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994), and *E. I. du Pont & Co*., 311 NLRB 893 (1993).[13] In these cases, the Board stated that in determining whether an employer violates Section 8(a)(2) and (1) by interfering with, dominating, or supporting a committee, its inquiry is two-fold. The first inquiry is whether the entity involved is a ''labor organization'' as defined in Section 2(5) of the Act. If not, the allegation is dismissed. If so, the second inquiry is whether the Respondent's conduct vis-a-vis this labor organization

[10] HRD Representative Caudill apparently advised the Committee as to policy and past practice before the Committee reversed its position on the Clinton discharge. See the above-quoted September 11 Committee minutes.

[11] The following testimony is noteworthy.

Production employee Elva Jackson, who served on the Committee from January 1988 until March 1991, testified that HRD informed the Committee that HRD would process a grievance filed by A. Jay Johnson. Thereafter, the Committee had no further involvement with Johnson's grievance.

Jackson also testified about a grievance filed by Mike Butler on January 10, 1989. Jackson testified that three members of the Committee met ex parte with a witness concerning Butler's grievance. HRD Representative Caudill then filed a grievance against Jackson alleging that Jackson acted improperly by contacting other employees to obtain private information regarding the witness. Initially, Deb Orchard, HRD employee relations manager, granted Caudill's grievance and informed Jackson that she had ''no alternative but to dismiss [Jackson] from [her] duties as a member of the Grievance Committee.'' Subsequently, Orchard apprised Jackson that Caudill's grievance ''has been dropped by the Company. After investigating this grievance we have found a few inconsistencies.''

Other background evidence in the form of testimony from former Committee Chairperson Bill Bates shows that the Respondent refused to abide by its then-prevailing written procedure permitting the Committee chairperson to call special meetings to address a backlog of termination grievances, which the Respondent felt did not warrant an emergency meeting. By contrast, the Respondent encouraged special meetings when they advanced its interests. Thus, the Charging Party and former grievance chairperson, Lynn Wells, testified regarding a 1987 seniority grievance that the Committee decided in favor of one employee with less overall seniority but greater department seniority than another employee. When Wells told Dick Rumfeld, Leck's predecessor, that she thought the Committee had erred, Rumfeld told her that if a special meeting were called, Rumfeld would explain how the Committee's resolution could affect bumping rights during a layoff. Wells testified that after a special meeting with Rumfeld, the Committee reconsidered the grievance, reversed itself, and granted the job to the more senior employee irrespective of department seniority, thereby allowing bumping between departments.

[12] The judge based this finding on Leck's testimony that he believed that employees suggested having a Grievance Committee in 1983 and that the Respondent approved this suggestion, and on the fact that both the Respondent and the employees understood that the grievance procedure, as prepared and amended by the Respondent, would govern.

[13] Member Stephens did not participate in *E. I. du Pont & Co*. Both cases were decided before Chairman Gould and Members Browning, Cohen, and Truesdale were appointed to the Board.

Member Cohen does not necessarily adopt the entire legal analysis in *Electromation* and *E. I. du Pont & Co*. He finds that the Committee in this case falls literally within the language of Sec. 2(5). Further, the pattern of exchanges between the Committee and the Respondent, with the Respondent having the ultimate power to decide, was clearly ''dealing'' within the meaning of Sec. 2(5). Finally, the Respondent has exercised pervasive control over the formation and administration of the Committee, thereby plainly establishing interference and domination.

constitutes domination or interference with the organization's formation or administration, or unlawful support of the organization. *Electromation, Inc*., supra, 309 NLRB at 996.

A. *The Labor Organization Issue*

A Section 2(5) labor organization is defined in terms of certain critical elements: whether employees participate; whether the entity in question addresses ''grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work''; and whether it has a purpose, in whole or in part, of ''dealing with'' the employer about the foregoing subject matters. *Electromation*, supra, 35 F.3d at 1158. These elements are all present here.

It is undisputed that employees participate in the Grievance Committee. We also find that the Committee handled Section 2(5) subject matters. As its name implies, the Grievance Committee was set up to, and did in fact, address ''grievances.''[14] In addition, the Committee addressed the ''no-call, no-show'' policy, clearly a term or condition of employment. The more difficult issue, which we discuss below, is whether the Committee's purpose, at least in part, was to ''deal with'' the Respondent concerning grievances and conditions of work. The Committee's purpose is shown by what the organization is set up to do and by what it actually does. *Electromation*, supra, 309 NLRB at 996. The actual functions of the Grievance Committee show that it existed for the purpose, at least in part, of ''dealing with'' the Respondent concerning grievances and other conditions of employment.

In *NLRB v. Cabot Carbon Co*., supra, 360 U.S. 203, 210–211, the Supreme Court held that the term ''dealing with'' in Section 2(5) is broader than the term ''bargaining'' and applies to situations beyond the negotiation of a collective-bargaining agreement. For example, it covers such matters as presenting grievances and making recommendations concerning terms and conditions of employment. Thus, in *Cabot Carbon* the Court found that certain employee committees existed, at least in part, for the purpose of dealing with the employer concerning grievances. 360 U.S. at 213.

The committees at issue in that case received grievances filed by employees, considered the merits of the grievances after consulting with relevant supervisory and management officials and, if the grievance was determined to be justified, the committees presented their findings to senior management officials, who retained the final authority to decide how the grievance would be resolved. In finding that the committees were labor organizations, the Court explained:

> [T]he Employee Committees undertook the ''responsibility to,'' and did, ''[h]andle grievances [with respondents on behalf of employees] . . . according to grievance procedure set up [by respondents] for these plants and departments.'' It is therefore as plain as words can express that these Committees existed, at least in part, for the purpose ''of dealing with employers concerning grievances. . . .'' This alone brings these committees squarely within the statutory definition of ''labor organization.''

Cabot Carbon, 360 U.S. at 213.

The Supreme Court additionally observed that the committees before it made proposals and requests to the employer on many matters involving the employment relationship, and that the employer considered and discussed these recommendations with the committees, granting some and rejecting others with explanations. The Court found that the employer's ''consideration of and action upon'' the proposals and requests also constituted ''dealing with'' within the meaning of Section 2(5). *Cabot Carbon*, supra, 360 U.S. at 213–214.[15]

Applying these principles, we find that the Keeler Brass Committee, like the employee committees in *Cabot Carbon*, exists, at least in part, for the purpose of dealing with the Respondent concerning grievances. Focusing on the Respondent's actual practice with respect to the Committee, the record reflects several instances, within the 10(b) limitations period, in which the Respondent and the Committee dealt with one another concerning grievances and terms and conditions of employment, including the grievance procedure, the Committee's recommendations concerning Clinton's discharge and reinstatement, the Podpolucki discharge grievance, and the future application of the Respondent's no-call, no-show policy.

For example, when the Committee considered Clinton's grievance involving application of the Respondent's no-call, no-show policy, the Committee decided that the Respondent's decision to discharge Clinton was too harsh. The Committee recommended that the Respondent rehire Clinton under certain conditions. The Respondent advised the Committee that the Respondent would consider its proposals and report back to the Committee. As set forth in Vice President Leck's September 3 memorandum, the Respondent considered the Committee's proposals, but decided that Clinton's discharge was justified by past practice. It re-

[14] Contrary to the judge's view, the handling and discussion of grievances plainly falls within the subject matter listed in Sec. 2(5), which includes ''grievances.''

[15] See also *E. I. du Pont & Co.*, supra, 311 NLRB at 894 (''dealing with'' is a bilateral process that ordinarily entails a pattern or practice in which a group of employees makes proposals to management, management responds by acceptance or rejection, and compromise is not required). The Board's construction of the statutory term ''dealing with'' was upheld by the Seventh Circuit in *Electromation*.

fused to reinstate him as requested by the Committee. The Committee capitulated. At its September 11 meeting, the Committee heard additional testimony from HRD about previous applications of the no-call, no-show policy. The Committee then reversed itself and denied the grievance. Thereafter, the Respondent changed the no-call, no-show policy.

Similarly, with respect to Podpolucki's grievance, the Committee initially decided to reinstate her with backpay. Thereafter, however, after consultation with a supervisor and with the Respondent's permission, the Committee arranged for a special committee meeting to hear additional testimony from a management official. The Committee then reversed its prior decision and denied Podpolucki's grievance.

These events show that the grievance procedure functioned as a bilateral mechanism, in which the Respondent and the Committee went back and forth explaining themselves until an acceptable result was achieved. This pattern of ''dealing'' within the 10(b) limitations period is further illuminated by events outside that period, e.g., the Johnson, Butler, and seniority grievances.[16]

This ''dealing'' between the Respondent and the Committee distinguishes the Keeler Brass Grievance Committee from the grievance committees at issue in *Mercy-Memorial Hospital*, 231 NLRB 1108 (1977), and *John Ascuaga's Nugget*, 230 NLRB 275 (1977).[17] Those employee committees could definitively resolve grievances without further recourse to the employer. The Keeler Brass Grievance Committee, in contrast, does not have full grievance handling authority without dealing with management. This is reflected by Clinton's case. The Committee recommended conditional reinstatement. The recommendation was considered by HRD, but received a negative reaction followed by outright rejection. The Committee then considered additional evidence from HRD and reached a result that yielded to HRD. Similarly, in Podpolucki's case, the Committee decided that reinstatement and backpay were warranted but then changed course after ex parte discussion with management.[18]

In addition, the Committee recommended changes in terms of employment that management acted on. At the August 28 meeting, the Committee requested reexamination of the no-call, no-show policy. The Respondent did so. Moreover, by discussing and changing special meetings, the Respondent and the Committee dealt with each other concerning a term and condition of employment, i.e., the grievance procedure itself.

Based on the foregoing, we find that the Respondent and the Committee dealt with one another concerning grievances and other conditions of work.[19] Because the Committee met all other aspects of the statutory test, we conclude that the Keeler Brass Grievance Committee is a statutory labor organization.

B. *The 8(a)(2) Conduct*

We now address whether the Respondent unlawfully dominated or interfered with the Committee. We find that the Respondent dominated the formation of the Committee in 1983, dominated its reformation in 1991 (within the 10(b) period), and continued to dominate its administration thereafter.

A labor organization that is the creation of management, whose structure and function are essentially determined by management, and whose continued existence depends on the whim of management, is one whose formation or administration has been dominated under Section 8(a)(2). *Electromation*, supra, 35 F.3d at 1169–1170, enfg. 309 NLRB at 995.[20] In this case, as

[16] See fn. 11 above. We rely on this earlier evidence of dealing to shed additional light on the pattern or practice of dealing within the limitations period. *Machinists Local 1424 v. NLRB (Bryan Mfg. Co.)*, 362 U.S. 411, 416 (1960). The Respondent contends that the Grievance Committee was not established for the purpose of dealing with the Respondent concerning grievances, noting in this regard that the grievance policy expressly states that decisions of the committee are ''final.'' According to the Respondent, any bilateral dealing that may have taken place in adjusting the Clinton and Podpolucki grievances was an exception to a general practice of according the committee's decisions the finality contemplated under the policy. We find no merit to these contentions, as the evidence set forth above shows that, regardless of the language of the policy, the Respondent *consistently* has *not* considered the committee's decisions to be final and has instead treated them as recommendations that it was free to accept or reject. See *Electromation*, supra, 309 NLRB at 996 (''[p]urpose is a matter of what the organization is set up to do, and that may be shown by what the organization actually does'').

[17] Because those two cases are distinguishable from this one, Member Browning finds it unnecessary to pass on whether those two cases were correctly decided.

[18] We do not pass on the situation when an employee committee receives ''input'' from management and then independently and finally resolves employment issues. In that case, there is contact between the committee and management, but only as an aid to the committee's independent authority to render a final decision. That is not the case here.

[19] The General Counsel additionally contends that the policy on its face contemplates that the Respondent will deal with the Committee concerning grievances. We find it unnecessary to pass on this contention, as we have found that the Respondent has, in practice, dealt with the Committee concerning grievances as well as other Sec. 2(5) subject matters.

[20] In *Electromation*, the Seventh Circuit enforced the Board's finding of domination of action committees in circumstances when it was the employer's idea to create the committees; the employees were not given any real choice in the committees' formation; the employer drafted the purposes and goals of the committees, which defined and limited the subject matter to be covered by each committee; and the employer determined the management members of the committee. The employer there posted signup sheets for action committees to deal with employees' complaints; drafted the written purposes and goals of the committees; determined how many members would compose a committee; explained committee membership in a memorandum to employees; and posted a notice announcing the members of each committee and the dates of initial committee meetings. Management representatives also participated in the meetings to facilitate the discussions.

in *Electromation*, actual domination is established by virtue of the Respondent's specific acts of recreating the organization, modifying and amending it, and determining its structure and function.[21]

Contrary to the judge's factual finding, the probative evidence fails to show that employees suggested having a grievance committee in 1983, which the Respondent merely approved. The documentary evidence shows that the original 1983 grievance procedure was prepared by HRD and approved by the Respondent. The Respondent's written policy established and specified the purpose of the Committee, its composition, and its role in the grievance procedure. The judge based his finding entirely on Vice President Leck's ''belief'' concerning the 1983 events. That ''belief,'' however, could not have been based on first-hand knowledge because Leck was not there.[22] In our view, Leck's testimony cannot overcome the strong documentary evidence that plainly shows that the Respondent effectively established the original Committee and determined its structure and function by drafting its written purposes and goals.

Further, even if the judge were correct in finding that the Respondent did not dominate the creation of the Committee in l983, there would nonetheless be a violation based on the reformation of the Committee in 1991 within the 10(b) period. Respondent dominated that reformation and the subsequent evolving administration of the Committee during the 10(b) period. The grievance procedure was modified unilaterally by the Respondent to reduce the number of members on the Committee, to change the days that the Committee met, and to require the Respondent's approval for special Committee meetings. The Respondent, as evidenced by a flurry of memoranda addressed to employees, determined the Committee's membership eligibility rules, solicited employees to elect committee membership, posted signup sheets, approved the candidates, conducted the election, counted the ballots, and announced committee membership. The Committee's Charter (see Appendix A), which was drafted by the Respondent, determines the eligibility for committee membership, the number of committee members and the length of their terms, and the scheduling of committee meetings. This pervasive involvement in the Committee's composition inherently interferes with the employees' choice of their bargaining representative. Further, management representatives participated in and influenced committee meetings by focusing discussion on particular grievances and conditions of work important to the Respondent.

Based on these facts, which parallel many of those present in *Electromation*,[23] we find that the Respondent's conduct vis-a-vis the Grievance Committee constituted ''domination'' in its reformation and ongoing administration.[24]

Under all the circumstances, we further find that the Respondent unlawfully contributed support to the Committee. In particular, committee meetings were scheduled biweekly in a company conference room. The Respondent supplied the necessary materials, including secretarial and clerical assistance. The Respondent also paid committee members for their time.

The Board made clear in *Electromation* that paying employee members of a committee for their time and giving that committee supplies and space to meet is not per se a violation of Section 8(a)(2). 309 NLRB at 998 fn. 31. We recognize that the difference between unlawful assistance and unlawful domination is often one of degree and that the line of demarcation between permissible cooperation and unlawful support, domination, or interference is sometimes difficult to draw. In the totality of the circumstances of this case, however, as in *Electromation*, the Respondent's assistance is in furtherance of its unlawful domination of the Grievance Committee. *Electromation*, supra, 35 F.3d at

[21] Thus, the Respondent's involvement ''cannot fairly be characterized as 'mere cooperation.''' See *Electromation*, supra, 35 F.3d at 1165–1166 and 1168, distinguishing *Chicago Rawhide Mfg. Co. v. NLRB*, 221 F.2d 165 (7th Cir. 1955).

[22] When asked by counsel for the General Counsel whether the 1983 Grievance Committee was established through employee participation and then approved by the Employer, Leck, whose tenure commenced in May 1989, testified, ''I believe that is correct.''

[23] Contrary to the suggestion of our concurring colleague, we believe that the instant case presents at least as compelling a case for a violation as did *Electromation.* On the ''labor organization'' issue, there is clear ''dealing'' between Respondent and the Committee concerning grievances and other terms and conditions of employment. On the ''domination'' and ''interference'' issues, the Respondent drafted the Committee's charter, set time limits for terms of Committee members, established eligibility rules for being on the Committee, set forth election procedures, announced the election results, determined the number of employees who would serve, dictated the meeting days, and permitted special meetings only with company approval. In both cases, the evidence failed to establish that the employees came up with the idea for the committees. On the other hand, in neither case did the employer designate the employee members of the committees. Further, in neither case was the employer acting in response to a union organizational drive.

In view of the foregoing, we believe that our finding of a violation herein is amply supported by *Electromation.* Further, our finding is quite consistent with the Seventh Circuit's refusal to find a violation in *Chicago Rawhide*. As that court noted, the employer in *Chicago Rawhide* did not control the creation, structure, and administration of the committee involved therein. *Electromation v. NLRB*, supra, 35 F.3d at 1168.

[24] See generally *Clapper's Mfg.*, 186 NLRB 324, 332–334 (1970), enfd. 458 F.2d 414 (3d Cir. 1972) (domination found when employer suggested the form and structure of the committee, established its purpose, and retained power to determine its composition); *Fire Alert Co.*, 182 NLRB 910, 915–917 (1970), enfd. per curiam 77 LRRM 2895 (10th Cir. 1971) (domination found when employer instructed the employees to elect three representatives, assigned each employee to a particular representative who would present grievances for that employee, and so told employees); *Han-Dee Spring & Mfg. Co.*, 132 NLRB 1542, 1543 (1961) (domination found when employer organized and determined nature, structure, and function of employee grievance committee).

1170. Because the Respondent's conduct in supplying materials, furnishing space, and paying committee members for their services is in furtherance of the Respondent's domination of the Committee, we find this case distinguishable from cases when an employer confers such benefits during arm's-length dealing with a legitimate labor organization.[25]

Based on these facts, we find that the Respondent dominated the reformation and administration of the Keeler Brass Grievance Committee and contributed unlawful support to it. The Committee, in structure and governing protocol, was the creation of the Respondent. Thus, the Respondent did more than merely cooperate with employees or their representatives in carrying out their independent intention to establish a grievance committee.[26] In these circumstances, disestablishment of the dominated labor organization is the proper remedy. We shall order that the Respondent immediately disestablish the Committee. *Electromation*, supra, 309 NLRB at 995 fn. 24 and 998.

ORDER

The National Labor Relations Board orders that the Respondent, Keeler Brass Automotive Group, a division of Keeler Brass Co., K B Lighting, a joint venture of Keeler Brass Co., Kentwood, Michigan, and Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Dominating, assisting, or otherwise supporting the Keeler Brass Grievance Committee created in 1983 and modified in 1991.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately disestablish and cease giving assistance or any other support to the Keeler Brass Grievance Committee.

(b) Post at its facilities in Kentwood, Michigan, and Grand Rapids, Michigan copies of the attached notice marked ''Appendix B.''[27] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

CHAIRMAN GOULD, concurring.

I join my colleagues in finding that the Respondent violated Section 8(a)(2) in connection with the Grievance Committee. In other circumstances, I would find that employee participation groups do not fall within the statutory definition of labor organization and are not, therefore, subject to the proscriptions of Section 8(a)(2). I would also find that in certain circumstances an employer's involvement with an employee participation group does not amount to unlawful domination under Section 8(a)(2). For the reasons set forth below, however, I find that none of these circumstances are present in this case. On this basis alone, I concur with my colleagues.

The Board found that employee participation groups were not labor organizations under Section 2(5) in two important decisions: *John Ascuaga's Nugget*[1] and *Mercy-Memorial Hospital*.[2] The committee at issue in *John Ascuaga's Nugget* was an Employees' Council established by the employer to resolve grievances of employees who were unable to resolve problems with their supervisors. Employees in each department voted annually for an employee representative on the Council. When the Council met to handle grievances, it was composed of the employer's director of employee relations, who acted as chairman, the employee elected from the grievant's department, and a third member selected by the first two. The third member had to be selected from the management of a department other than that of the grievant. When a grievance could not be resolved in discussions with the supervisor and the department head, the grievant could make a timely request for the Council to be convened. The Council would receive testimony and/or exhibits from the grievant and from the grievant's immediate supervisor. The Council would then render a final and binding decision.

In dismissing the 8(a)(2) allegation concerning the Council, the Board found that the Council was not a labor organization because it did not ''deal with'' the employer within the meaning of Section 2(5) of the Act. It did not interact with management for any purpose other than to render a final decision on a grievance. In this regard, the Board found that the Council

[25] See, e.g., *BASF Wyandotte Corp.*, 274 NLRB 978, 980 (1985), enfd. 123 LRRM 2320 (5th Cir. 1986).

[26] Our reasoning and ruling in this case is limited to the Grievance Committee at issue and does not foreclose the lawful use of legitimate employee grievance committees that are truly independent.

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] 230 NLRB 275 (1977).

[2] 231 NLRB 1108, 1118–1121 (1977).

performed a purely adjudicatory function which had been fully delegated to it by management.

Similarly, in *Mercy-Memorial Hospital*, the employer established a grievance committee with 10 employees (one from each hospital department). Employee-members were elected by all employees for 2-year staggered terms. A meeting of the committee was called if presentation of the grievance to the immediate supervisor and department head failed to resolve the matter. When the committee convened to hear a grievance, the grievant chose four employee-members and a department head, other than his own or that of a sitting committee member. After the committee heard the evidence, it rendered a decision by majority vote. That decision was final and binding unless the grievant chose to appeal to the personnel committee of the board of directors. The Board agreed with the administrative law judge's finding that the committee was not a labor organization because it did not deal with the employer on grievances. Instead of discussing the grievances with management, the committee by itself decided the validity of the employees' complaints.

I fully agree with the Board's decision and rationale in those cases. It is consistent with the movement toward cooperation and democracy in the workplace which I have long supported.[3] This movement is a major advance in labor relations because, in its best form, it attempts nothing less than to transform the relationship between employer and employees from one of adversaries locked in unalterable opposition to one of partners with different but mutual interests who can cooperate with one another. Such a transformation is necessary for the achievement of true democracy in the workplace. However, it does pose a potential conflict with the National Labor Relations Act, enacted in 1935 at a time when the adversarial struggle between management and labor was at its height.

The importance of *John Ascuaga's Nugget* and *Mercy-Memorial Hospital* is that these decisions find a place, however limited, for legitimate cooperation within the confines of the language of the statute and Board and court precedent. Accordingly, when employees freely participate in a committee which, in itself, has the authority to resolve grievances and make final decisions, I would apply *John Ascuaga's Nugget* and *Mercy-Memorial Hospital* and find that the Committee is not a labor organization, and that the employer, therefore, did not violate Section 8(a)(2) even though it created the Committee and assisted it.

The Committee at issue here, however, does not have the authority to make final and binding decisions on grievances. It, therefore, is not controlled by *John Ascuaga's Nugget* and *Mercy-Memorial Hospital*. In contrast to those cases, the practice of the Committee here has consisted of exchanges between the Committee and higher management on the grievances. Thus, the Committee made an initial decision to reinstate Podpolucki with backpay. After a negative response from management, the Committee heard additional testimony and reversed its prior decision. Similarly, the Committee initially recommended conditional reinstatement for Clinton. After this was rejected by management, the Committee considered additional evidence from management and reached a result that yielded to management. These transactions tend to show that the Committee was not the final arbiter of grievances. It simply made recommendations and then often changed those recommendations after consultation with management. This amounts to dealing with the employer on the matter of grievances and compels the finding that the Committee is a labor organization within the meaning of Section 2(5).

The question remains as to whether the Respondent unlawfully dominated or interfered with the labor organization. The Court of Appeals for the Seventh Circuit considered such a question in *Chicago Rawhide Mfg. Co.*[4] and set forth a standard, different from that used by the Board, for determining whether the employer's conduct violated Section 8(a)(2). Like *John Ascuaga's Nugget* and *Mercy-Memorial Hospital*, the Seventh Circuit's reasoning in *Chicago Rawhide*, set forth below, is a sound interpretation of the statute which allows for the lawful existence of some cooperative efforts. I have stated agreement with the court's approach in writings published before I joined the Board.[5] I adopt the court's approach in this decision.

In *Chicago Rawhide*, the court, noting that Section 8(a)(2) and (1) were designed to keep the employer from influencing unions or the employees' choice of unions, found that it was necessary to draw a line between support and cooperation. The court defined support as the presence of ''at least some degree of control or influence,''[6] no matter how innocent. Cooperation, on the other hand, was defined as assisting the employees or their bargaining representatives in carrying out their ''independent intentions.''[7] The court went on to find that assistance or cooperation may be a means of domination, but that the Board must prove that the assistance actually produces employer control over the organization before a violation of Section 8(a)(2) can be established. Mere potential for control is not sufficient; there must be actual control or domination. The court set forth the following test: ''The test of whether an employee organization is employer con-

[3] See, e.g., William B. Gould IV, *Japan's Reshaping of American Labor Law* (MIT Press, 1984); and William B. Gould IV, *Agenda for Reform: The Future of Employment Relationships and the Law*, (MIT Press, 1993).

[4] 221 F.2d 165 (7th Cir. 1955).

[5] Gould, *Agenda for Reform*, supra, fn. 3 at p. 140.

[6] Id. at 167.

[7] Id.

trolled is not an objective one but rather subjective from the standpoint of the employees.''[8]

Applying this rationale to the facts in *Chicago Rawhide*, the court held that the Board, in finding domination and interference, had confused lawful cooperation with unlawful support. The court emphasized that the employee organization was formed by employees without any involvement of the employer, that the organization actually represented a majority of the employees, and that the employees demonstrated their positive attitude toward the committee by engaging an attorney to file a brief with the court in opposition to the Board's violation finding. The court noted that the Board could point to no evidence establishing actual domination of the organization by the employer. Instead, the Board relied on indicia of potential control such as the unrestricted and unexercised power to lay off or transfer committee members and the assistance rendered to the committees in such forms as permitting elections for the committees to be held on company premises and allowing the committee to process grievances on companytime. In disagreement with the Board, the court found that in the absence of evidence that the potential for control had been realized, these acts did not provide a basis for an unfair labor practice finding. The court stated: ''We are not going to permit the destruction of a happy and cooperative employer-employee relationship where there is absolutely no evidence to support a finding of unfair labor practice.''[9]

The same court clarified its approach to the difference between support and cooperation in its opinion enforcing the Board's Order in *Electromation*.[10] In that case, the court rejected the employer's argument that under *Chicago Rawhide*, a violation of Section 8(a)(2) can be found only if there is evidence of employee dissatisfaction with the labor organization. The court asserted that, while the subjective wishes of employees should be taken into account, the interpretation of Section 8(a)(2) cannot be limited solely to the consideration of employees' subjective will. To do so would contravene *NLRB v. Newport News Shipbuilding & Dry Dock Co.*,[11] where the Supreme Court held that employer motivation and employee satisfaction with a labor organization were not controlling in the test of independence under Section 8(a)(2). The Seventh Circuit summarized the test for domination as follows:

> The Supreme Court has explained that domination of a labor organization exists where the employer controls the form and structure of a labor organization such that the employees are deprived of complete freedom and independence of action as guaranteed to them by Section 7 of the Act, and that the principal distinction between an independent labor organization and an employer-dominated organization lies in the unfettered power of the independent organization to determine its own actions.[12]

Applying this test to the facts in *Electromation*, the court concluded that substantial evidence supported the finding of a violation. The court emphasized that the Action Committees were created solely by the employer who alone determined their functions, controlled the subject matter to be considered, and both participated in and gave financial support to the committees. The court found that, in these circumstances, the committees lacked the independence of action and freedom of employee choice to warrant a finding that they were independent labor organizations not dominated by the employer.

The determining factor in the court's analysis is the degree of independence enjoyed by the employee participation group. In *Chicago Rawhide*, the committee originated with the employees and met outside the presence of management. Management did not determine the subject matters to be considered, determine who should be on the committee, or have veto power over any committee recommendations. Those facts established the independence of the committees. *Electromation* involved radically different facts. There, the employer controlled all aspects of the committees from their creation to their functioning. Those facts established the lack of independence.

I agree with the Seventh Circuit's analysis in both *Chicago Rawhide* and the above-described portion of it in *Electromation*.[13] Those cases, however, represent extremes. A minimal degree of employer involvement was present in *Chicago Rawhide*, whereas a high degree was present in *Electromation*. A wide range of employee participation programs lies between these extremes. Indeed, the committee at issue in the present case has neither the minimal involvement of *Chicago Rawhide* nor the maximum involvement of *Electromation*.

More guidelines are necessary in order to properly evaluate cases which do not fall under either extreme. First, there is the question of how the employee group came into being. The court in *Chicago Rawhide*

[8] Id. at 168, quoting *NLRB v. Sharples Chemicals*, 209 F.2d 645, 652 (6th Cir. 1954), and *NLRB v. Wemyss*, 212 F.2d 465, 471 (9th Cir. 1954).

[9] Id. at 170.

[10] *Electromation, Inc. v. NLRB*, 35 F.3d 1148 (7th Cir. 1994), enfg. 309 NLRB 990 (1992).

[11] 308 U.S. 241, 249 (1939).

[12] *Electromation*, 35 F.3d at 1170.

[13] Of course, legislation amending the Act may be necessary—particularly in light of uncertainty about the position of the United States Supreme Court on *Chicago Rawhide* and unnecessary litigation about what constitutes a ''labor organization'' within the meaning of the Act. See William B. Gould IV, ''*Cooperation or Conflict: Problems and Potential in the National Labor Relations Act*'' New York University's 48th National Conference on Labor, May 31, 1995.

stressed that the idea for an employee group began with the employees. Does this mean that any employee group which does not originate with employees is subject to unlawful employer domination? I think not. Much of the initiative for cooperative efforts in the workplace has come from employers, particularly in the nonunion sector.[14] I do not think these efforts are unlawful simply because the employer initiated them. The focus should, instead, be on whether the organization allows for independent employee action and choice. If, for example, the employer did nothing more than tell employees that it wanted their participation in decisions concerning working conditions and suggested that they set up a committee for such participation, I would find no domination provided employees controlled the structure and function of the committee and their participation was voluntary.

Second, the circumstances surrounding the creation of an employee committee are material to a determination of whether there is unlawful domination of the committee. If the employer created an employee participation organization in response to a union organizing campaign, I would draw the inference that the organization was designed to thwart employee independence and free choice.

Following these guidelines in the present case, it is clear that there are some factors which favor a dismissal and others which favor a finding of unlawful domination. Considered as a whole, the factors favoring a violation finding outweigh those favoring dismissal.

One factor favoring dismissal is that the employer here did not create the committee in response to organizing efforts by a union or concerted action by the employees. There is no indication that the committee was created as a means to undercut independent action by employees. Instead, the employer simply wished to involve employees in the grievance procedure. Under my view, the creation of the committee in these circumstances, standing alone, does not support a violation finding. Other factors favoring dismissal are that participation on the committee was voluntary, employees were the only voting members of the committee, and all voting members were elected by employees. The committee, therefore, allowed some exercise of free choice and provided some scope for independence.

There are many other aspects of the committee, however, that remain within the employer's control and, therefore, support a finding of domination. The employer set the time limit of terms for membership in the committee, established eligibility rules, established election procedures and conducted the election, announced the results of the election, dictated the number of employees who could serve on the committee, established the meeting days, and allowed special meetings (outside regular meeting days) to be held only with management approval. These elements of control indicate that the committee is not capable of action independent of the employer. Perhaps the most telling aspect of dependency is that the committee cannot even make a decision about when it will meet without prior approval from the employer.

Taken as a whole, I find that the factors favoring a violation outweigh those favoring dismissal. The freedom of choice and independence of action open to employees on the committee is too strictly confined within parameters of the employer's making for the committee to be a genuine expression of democracy in the workplace. For these reasons, I concur in finding a violation of Section 8(a)(2) in this case.

[14] Gould, *Agenda for Reform*, supra, fn. 2 at p. 140.

APPENDIX A

I. PURPOSE

To insure that all employees are treated fairly and consistently under Keeler Brass Company Policies and Procedures.

To provide the employees of Keeler Brass Company with a formalized method of resolving grievances which may arise out of misunderstanding or misapplication of current company policies or procedures. This procedure is to be administered by the employees of Keeler Brass Company, for the employees of Keeler Brass Company, in accordance with the procedures outlined in this policy.

II. SCOPE

This policy applies to all Keeler Brass Company employees as an optional procedure.

III. RESPONSIBILITY

The immediate supervisor is responsible for the first step in the procedure, the Human Resources Department is responsible for the second step, and members of the Grievance Committee for the third step.

IV. GENERAL SECTION

This procedure is to be used by individual employees of Keeler Brass Company who feel an irregularity occurred in the application of policy or procedure. By using this grievance procedure, all employees can be assured of having a formalized method of expressing their concern(s) about the misapplication of Company policy, or what is thought to be misapplication of Company policy by the employee. In reviewing individual cases, the committee will be fair to the employees as well as the Company by weighing all the facts before arriving at a conclusion. Each grievance will be heard on the merits of the case and not the personalities.

A. *Grievance Committee*

1. Organization of the Committee

a. The members of the Grievance Committee will be elected from each plant as follows:

Kentwood	3
Stevens	2

b. All terms for the Grievance Committee will be for two years.

c. Members may not seek reelection for two years after serving on the committee.

d. The Vice President of Human Resources or his/her representative will act as an advisor to the Committee regarding Company Policies and Procedures.

e. The Chairperson and Secretary will be elected by the Committee members.

f. The Chairperson will vote only in the event of a tie.

2. Meeting of the Grievance Committee

a. The Committee will meet twice a month (the second and fourth Wednesdays).

b. The Committee will place the grievances on the agenda for the next meeting and inform the Human Resources Department to notify the employee of the time and place of the meeting.

c. All persons involved with the grievance will be notified and asked to present their views at the meeting. All witnesses will be in attendance (limit 2). All available evidence should be presented at this time.

d. The Chairperson of the committee may request to schedule an emergency meeting with the approval of the Vice President of Human Resources.

3. Settlement of a Grievance

a. After all parties involved have been heard and all evidence is presented, they will leave the hearing.

b. The Committee will vote on each grievance after it has been heard or table the problem until more investigation can be made.

c. The Committee will notify the Vice President of Human Resources of its decisions and recommendations as to corrective actions.

d. After the Committee has made its decision, it is final. The Vice President of Human Resources will respond to the Committee's recommendations as to corrective actions taken.

e. The grievance will be followed to insure that corrective action has been taken.

V. SPECIFIC FUNCTION

The process of entering a grievance or complaint shall be handled in the following manner:

A. *First Step*

1. Whenever an employee has a problem, it will be discussed with his/her immediate department supervisor.

2. After discussing the problem, the department supervisor shall give the employee his/her verbal answer.

B. *Second Step*

1. If the employee is not satisfied with the solution offered by his/her supervisor, he/she will then write a summary of the problem on a form obtained from either the supervisor or the Human Resources Department.

2. After completing this form, the employee will then make an appointment with a representative from the Human Resource Department. This meeting will be held within five (5) working days.

3. The employee has the option of taking a fellow employee to the meeting.

4. The Human Resources Department representative will act as a mediator and attempt to resolve the problem.

5. At the meeting, the mediator may call anyone with knowledge of the problem into the meeting.

6. If the problem seems to be a direct violation of policy, the Plant Operations Manager or functional head will be called into the meeting to help find a solution to the problem.

7. The Human Resources Department will reply (to the employee) on the bottom of the form filled out by the employee. If the reply is lengthy, an attachment may be necessary.

C. *Third Step*

1. If after meeting with the Human Resources Department, the employee is unsatisfied with the solution, he/she should contact the Human Resources Department within three (3) working days and request that the form be submitted to the Grievance Committee for action.

2. All forms will be held in sealed envelopes and forwarded to the Committee Chairperson.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT dominate, assist, or otherwise support the Keeler Brass Grievance Committee.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately disestablish and cease giving any assistance or support to the Grievance Committee.

KEELER BRASS AUTOMOTIVE GROUP, A DIVISION OF KEELER BRASS CO., K B LIGHTING, A JOINT VENTURE OF KEELER BRASS CO.

Howard Dodd, Esq., for the General Counsel.
Peter J. Kok, Esq. and *Elizabeth McIntyre, Esq. (Miller, Johnson, Snell & Cummiskey)*, of Grand Rapids, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. On a charge of unfair labor practices filed on August 8, 1991, by Robert Puckett and Lynn Wells (employees or Charging Parties), against Keeler Brass Automotive Group, a division of Keeler Brass Co., and K B Lighting, a joint venture of Keeler Brass Co. (Respondent).

The complaint in essence alleges, but the Respondent denies, that the Grievance Committee is a labor organization within the meaning of the Act. The complaint further alleges that Respondent solicited employees to become members of the Grievance Committee; on May 13, 1991, Respondent conducted an election whereby employees elected other employees to be members of the Grievance Committee; that since on or about May 13, 1991, the Grievance Committee has processed employee grievances and dealt with Respondent concerning wages, hours, and other terms and conditions of employment; since on or about May 13, 1991, Respondent has rendered aid, assistance, and support to the Grievance Committee, which Respondent has admitted, by:

(a) Permitting the Grievance Committee to utilize Respondent's facilities and equipment.

(b) Providing services such as secretarial services for the Grievance Committee.

(c) Compensating the Grievance Committee members for their time spent at Grievance Committee meetings and conducting business of the Grievance Committee, all in violation of Section 8(a)(1) of the Act; that by doing all of the alleged above-described things, Respondent has dominated and interfered with the formation and administration of a labor organization, and contributed financial and other support to the Grievance Committee; that by so doing Respondent did interfere with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act; and that by engaging in the above conduct, Respondent did dominate and interfered with the formation and administration of a labor organization, and contributed financial and other support to it, resulting in unfair labor practices affecting commerce within the meaning of Section 8(a)(2), (6), and (7) of the Act.

On September 20, 1991, the Respondent filed an answer denying the unadmitted allegations set forth in the complaint.

The hearing in the above matter was held before me in Grand Rapids, Michigan, on January 29, 1992. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

On the entire record in this case, including my observation of the demeanor of the witnesses, and my consideration of the briefs filed by respective counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Keeler Brass Automotive Group, a division of Keeler Brass Company, K B Lighting, a joint venture of Keeler Brass Company is, and has been at all times material, a corporation duly organized under, and existing by virtue of, the laws of the State of Michigan.

At all times material, Respondent has maintained its principal office and place of business at 2929 32d Street, S.E., Kentwood, Michigan (the Kentwood plant or facility); and that Respondent maintains other plants in the State of Michigan, including a plant at 236 Stevens Street, S.W., Grand Rapids, Michigan (the Stevens plant or facility), where it has been engaged at all times material, in the manufacture, sale, and distribution of automotive parts and related products. During the calendar year ending December 31, 1990, which period is representative of Respondent's operations during all times material, Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed at its Kentwood and Grand Rapids, Michigan plants automotive parts valued in excess of $100,000, of which products valued in excess of $50,000 were shipped from the plants directly to points located outside the State of Michigan.

The complaint alleges, the answer admits, and I find that Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges and the answer denies that Keeler Brass Company's Grievance Committee (Grievance Committee) is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Information*

At its Kentwood and Stevens plants, Respondent is engaged in the manufacture, sale, and distribution of automotive parts and related products.

Respondent's employees organized a Grievance Committee and Respondent approved it and rendered secretarial and clerical assistance to the committee. Because the complaint contains allegations that Respondent's human resources manager participated, through a member of his staff, in the Grievance Committee's operations, the questions presented for determination are as follows:

Is the Grievance Committee a labor organization within the meaning of the Act, and if so, did Respond-

ent dominate and interfere with the formation and administration of the Grievance Committee, as a labor organization?

The following named persons occupied the positions set opposite their respective names and have been, at all times material, supervisors of Respondent within the meaning of Section 2(11) of the Act or agents of Respondent within the meaning of Section 2(13) of the Act:

Paul Leck	Vice president of human resources
Patricia (Pattie) Caudill	Human resources representative to the Grievance Committee, and currently personnel manager at the Stevens plant.[1]

B. *Respondent's Involvement with the Employees' Grievance Committee*

In 1983 Respondent's employees established a Grievance Committee which was approved by Respondent. The procedure governing the committee's operation was outlined in a document dated November 15, 1983, entitled ''Grievance and Complaint Procedure'' (G.C. Exh. 2), and maintained by Respondent to the present time.

Respondent's, vice president of human resources, Paul Leck, posted a memorandum on the employees bulletin board dated March 26, 1991, which in essence read as follows:

> For some time we have been studying different approaches to the establishment of a new grievance procedure. After much thought and input, we have decided to hold a new election. The excellent performance of the committee during the past several months was a great factor in our decision to continue the practice of selection by election.
>
> The following positions are available for persons interested in serving on the Grievance Committee (these positions are for a two-year term):
>
> | | |
> |---|---|
> | Stevens Street | 1 opening |
> | Kentwood | 2 openings |
> | Alternate Covering S.S. and Ktwd. | 1 opening |
>
> All interested employees should sign the form next to this announcement at your plant no later than April 12, 1991. You will be advised of the election date and procedures.

Eligibility to run for the Grievance Committee was outlined in a document entitled ''Election Rules'' (G.C. Exh. 6), posted for employees by Vice President of Human Resources Paul Leck, as follows:

> Each plant will have an election in its own facility to elect the designated number of committee members.
>
> A. Only those employees with a satisfactory work record will be eligible to run (no more than one write-up during the past 12 months). Management positions with line responsibility are exempt.
>
> B. The employee must have completed his initial 90-day probationary period.
>
> C. At least 15 days prior to election, a list will be posted on the bulletin boards for those who wish their name to appear on the ballot.
>
> D. Employees listed will be contacted for confirmation that they wish their name listed on the ballot.
>
> E. Election will be made by secret ballot.
>
> F. The alternate will be the person receiving the next highest votes; to be determined at the regular election. Term for alternate: 1 year.
>
> G. You will vote only on the people from your plant.
>
> H. An employee cannot succeed him/her self for a period of two years.

A memorandum to employees from Leck dated May 3, 1991, announcing the candidates for election, was posted and read as follows:

> Re: Grievance Committee Election
>
> Keeler Brass Automotive will be holding a Grievance Committee Election on Monday, May 13, 1991. The candidates for this Committee are:
>
> KENTWOOD:
>
> C. J. Burger—Department 233
> Steven Davis—Department 233
> Marvin Fergusen—Department 238
> Gerard Kruyswijk—Department 292
> Ike Prizada—Department 533
>
> STEVENS STREET:
>
> Rebecca Cadena—Department 350
> Diana Durst—Department 350
>
> Two representatives will be elected from Kentwood and one representative will be elected from Stevens Street. All hourly employees are invited and encouraged to vote for representatives from their respective plant.
>
> Voting and the counting of votes will be handled in the following manner:
>
> 1. Each supervisor will be issued ballots for the number of employees in his/her department.
>
> 2. Along with the ballots, each supervisor will receive a sealed box for completed ballots.
>
> 3. Employees will be given only one ballot by the supervisor and asked to return this ballot—complete or incomplete—to the sealed box provided.
>
> 4. When all employees have returned their ballots, the supervisor and a representative from his/her department will bring the box to the Human Resource Department for counting.
>
> 5. Human Resources, the supervisor, and the employee representative will count the ballots and maintain a plant-wide count.
>
> After all ballots are cast and the votes counted, the results of the election will be announced to all employees as soon as reasonably possible, but no later than Thursday, May 16, 1991.
>
> Help us to make this election successful, and we wish all of the candidates luck.
>
> Thank you.

[1] The facts set forth above are not in conflict in the record.

A document dated May 13, 1991, outlining the procedure to be used at the election (G.C. Exh. 8) was also posted by Respondent on the employees' bulletin board.

In a memorandum from Leck dated May 15, 1991, announcing the names of the candidates elected to the Grievance Committee from the Kentwood and Stevens facilities, respectively (G.C. Exh. 9), was posted on the employees' bulletin board.

The uncontroverted and credited evidence of record further shows that the newly elected members of the Grievance Committee first met June 26, 1991, when they chose a chairman and a secretary. The secretary is responsible for preparing the minutes of each meeting and they are sent to Leck's human resources department, where a summary of the minutes are prepared and posted for viewing by all employees.

In testifying, Leck admitted he was involved in modifying or amending the original 1983 Grievance and Complaint Procedure (G.C. Exh. 2) by rewriting policy and reducing the number of members on the Grievance Committee from 9 to 5, changing the dates of the Committee's regular meeting from the second and fourth Thursdays to the second and fourth Wednesdays of each month, eliminated all references to a ''Complaint Committee'' which had been abandoned, eliminated the committee's discretion to call special meetings and required it to obtain prior approval for special meetings from the human resources department, and there were essentially no substantive changes from the original 1983 procedure.

Conclusions

Respondent has acknowledged and the record evidence shows that Respondent helped its employees create a Grievance Committee; that Respondent established the grievance procedure and policy which since 1983 provides:

> I. *Purpose*
>
> To insure that all employees are treated fairly and consistently under Keeler Brass Company Policies and Procedures.
>
> To provide the employees of Keeler Brass Company with a formalized method of resolving grievances which may arise out of misunderstanding or misapplication of current company policies or procedures. This procedure is to be administered by the employees of Keeler Brass Company, for the employees of Keeler Brass Company, in accordance with the procedures outlined in this policy.
>
> II. *Scope*
>
> This policy applies to all Keeler Brass Company employees as an optional procedure.
>
> III. *Responsibility*
>
> The immediate supervisor is responsible for the first step in the procedure, the Human Resources Department is responsible for the second step, and members of the Grievance or Complaint Committees for the third step. . . .
>
> IV. *General Section*
>
> This procedure is to be used by individual employees of Keeler Brass Company who feel an irregularity occurred in the application of a company policy or procedure. By using this grievance procedure, all employees can be assured of having a formalized method of expressing their concern(s) about the misapplication of company policy, or what is thought to be misapplication of company policy by the employee.
>
> In reviewing individual cases, the committee will be fair to the employees as well as the company by weighing all the facts before arriving at a conclusion. Each grievance will be heard on the merits of the case and not on the personalities involved.

Respondent further acknowledged that it posted a notice inviting all employees interested in becoming candidates in the election for membership on the Grievance Committee to sign the sheet attached to the announcement; that Respondent provided the committee with secretarial and clerical assistance by summarizing and typing the minutes and other written documents of the committee; and that Respondent also provided the Committee with a meeting place and paid members of the Committee for their time spent in committee meetings, and when transacting Committee business.

In view of the evidence of Respondent's above-described admissions, the first question presented for determination is whether the employees' Grievance Committee constitutes a labor organization within the meaning of the Act. In this regard, Section 2(5) of the Act provides:

> The term ''labor organization'' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, for dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Thus, in construing Section 2(5) of the Act, the Supreme Court in *NLRB v. Cabot Carbon Co*., 360 U.S. 203 (1959), held that the words ''dealing with'' in Section 2(5) of the Act is interpreted broadly, and are not synonymous with nor restricting to the words ''bargaining collectively''; that ''dealing with'' means bargaining with, and that an employee committee which makes proposals, requests, or recommendations to the employer concerning any term or condition of employment is a labor organization within the meaning of Section 2(5) of the Act.

The Board, in following *Cabot Carbon*, has gone further by holding that in determining labor organization status it is critical to look to the intent of the parties when they created the committee; and that if the parties intended to deal with the employer regarding wages, hours, and other terms and conditions of employment, whether or not they have actually done so, an employees' committee may be found to constitute a labor organization within the meaning of Section 2(5) of the Act. *Armco, Inc*., 271 NLRB 350 (1984).

Respondent's Contacts with the Grievance Committee

In the instant case the record evidence is clear that over the years (1983 to and after July 1991), Respondent has dealt with the Grievance Committee by only processing and dis-

posing of grievances and minor changes in the grievance procedure. Specifically, in the summer of 1991, the Grievance Committee decided that the Respondent's discharge of employee Clinton was too severe and recommended leniency by requesting Respondent to rehire him. In support of its recommendation, the committee also recommended to Vice President of Human Resources Department Leck that employee Clinton:

> (1) Be rehired with a new seniority date.
> (2) That he be placed on 1-year probation and not receive a writeup during that period.
> (3) That he not receive backpay.
> (4) Be assigned to a position within the discretion of Respondent.

The minutes of the Grievance Committee shows that Leck informed the committee he would consider their recommendation and report back to the Committee. The record evidence further shows that Leck considered the Committee's recommendation.

By considering the Committee's recommendation, I find that the Respondent was not dealing with the committee in a negotiating sense but only in an effort to dispose of the grievance concerning the Respondent's discharge of Clinton. I find Respondent's conduct was within the written purpose of the Grievance Committee.

During a meeting of the Grievance Committee on August 28, 1991, Leck, having been invited to the meeting, told the Committee (Respondent's human resource committee) he would consider their discussion and get back to them. Leck also told the Committee he would consider the Committee's request for a change in the no-call/no-show company policy. After Leck's consideration, the policy was changed.

Respondent human resources department (Leck), or a representative of the department, discussed the number of members which would constitute the Committee and the Committee's authority to call special meetings.

After the new members were elected to the committee in 1991, Respondent (Leck) told the committee to reduce the number of its members.

Prior to November 6, the committee requested and Respondent approved a special meeting called by the committee.

I therefore find, on the foregoing uncontroverted and credited evidence, that Respondent's (Leck) discussions with the Grievance Committee and its acts of approval or disapproval of recommendations by the committee were in reference to changes in the grievance procedure and otherwise not related to wages, hours, and other terms and conditions of employment.

Although Respondent (Leck) agreed to consider changing the Company's no-call/no-show policy, he was not obligated to do so under the explicit language of the purpose of the grievance procedure. The fact that he did consider it does not, in my judgment, convert the committee's request and Leck's consideration into negotiations concerning wages, hours, and other terms or conditions of employment. Since the evidence fails to establish any dealings between Respondent and the Grievance Committee which involved wages, hours, and other terms or conditions of employment, I do not find that Respondent has dealt with the Grievance Committee as a labor organization. Consequently, I find *NLRB v. Cabot Carbon Co*., supra, and *Armco Inc*., 271 NLRB 350 (1984), cited by counsel for the General Counsel, do not support his position.

Additionally, the uncontroverted and credited evidence of record shows that the employees suggested having a grievance committee and Respondent approved the suggestion; that Respondent prepared an original and an amended grievance procedure, which both Respondent and the employees understood would govern the grievance procedure. Based on the foregoing evidence, I find that both the Respondent and the employee members of the Grievance Committee intended to create a grievance committee for the sole purpose of resolving employee grievances fairly, with respect to any misunderstanding or misapplication of company policies and procedures and, as such, the committee does not constitute a labor organization within the meaning of the Act.

Having found that the Grievance Committee is not a labor organization and that Respondent has not dealt with the committee as a labor organization within the meaning of the Act, I find that the complaint should be dismissed. *Cabot Carbon Co*., supra, and *Sparks Nugget*, 230 NLRB 275 (1977).

ORDER

Accordingly, the complaint should be, and it is, dismissed.[2]

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.